

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6393

PETITION OF WILLIAM A. PIERCE
(Hearing held October 3, 2012)

OPINION OF THE BOARD
(Effective date of Opinion, October 19, 2012)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes the construction of a second-story addition that requires a variance of 14.03 feet as it is within 10.97 feet of the front lot line (Wilson Place). The required front lot line setback for is twenty-five (25) feet.

Lisa S. Bontempo, the petitioner's wife and Anne R. Jaffe, an architect, appeared with the petitioner at the public hearing.

The subject property is Lot 28, Block 7, Woodside Subdivision, located at 8910 First Avenue, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 01090073).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the enclosure of an existing 16 x 22.4 foot second-story porch.
2. The petitioner testified that his house was built between 1902 and 1907, before the County's zoning ordinance came into existence. He testified that the existing house is currently sited in the northern front yard boundary (Wilson Place) and that the proposed construction will not expand or increase the footprint of the house. The subject property is located at the intersection of First Avenue and Wilson Place and the property's legal address is First Avenue. See Exhibit Nos. 4(a)-4(b) [site plans] and 7[zoning vicinity map].
3. The petitioner testified that the topography in his rear yard is lower than all of the properties that surround his lot and that the lot's topography slopes downward from front to back. He testified that the rear yard topography slopes downward approximately six feet from its

southern boundary and two feet from its western boundary. He testified that as a result of the lot's topography, their rear yard receives a tremendous amount of water on a regular and on-going basis. He testified that there is a drainage tube located at their immediate backyard that was probably installed around the time of World War II. Ms. Bontempo testified that to address the water runoff issues, the prior owners installed gravel pits to capture the water and that they have installed French drains and new gutters on the house. The petitioners testified that none of the surrounding properties receive that amount of water runoff that they receive on their lot. See Exhibit 3(b) [M-NCPPC topography map].

4. Ms. Jaffe testified that the subject property also slopes downhill from First Avenue approximately six feet and that new construction elsewhere on the petitioners' lot would add to the existing ponding in the property's backyard.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the house on the subject property has existed for over a hundred years and that the house is sited in the required northern front yard setback (Wilson Place). The Board finds that the proposed construction will not increase or expand the footprint of the existing house. The Board finds that the lot's topography is lower than all of the surrounding properties and that the topography slopes downward from front to back and also from side to side resulting in severe ponding the rear yard.

The Board finds that these are exceptional conditions peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the requested variance for the construction of a second-story addition is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction of a second-story addition will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed second-story addition will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 14.03 feet from the required twenty-five (25) foot front lot line setback (Wilson Place) for the construction of a second-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 4(b) and 8(a) through 8(p).

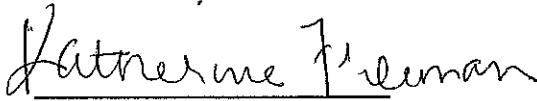
The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Walter S. Booth was necessarily absent and did not participate in this Resolution. On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with David K. Perdue and Catherine G. Titus, Chair, in agreement, the Board adopted the foregoing Resolution.


Catherine G. Titus
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 19th day of October, 2012.



Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.